

1 **ORDR**

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4 In re: SEASCAPE LEASING, LLC

Case No.: A-18-775027-P

5 Dept. No.: 4
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8 **AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

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10 W.San, LLC's Petition for Relief from Final Order Approving Transfer of Structured
11 Settlement Payment Rights and Seascape Leasing, LLC's Motion to Strike Fugitive Filings both
12 came before the court pursuant to respective Orders Shortening Time on the 24th day of July,
13 2018. Counsel for W.San, LLC, Lester A. Berman of Lee A. Drizin, Chtd., was present and
14 argued before the court. Counsel of record for Seascape Leasing, LLC, Patrick M. Etchebehere,
15 was not present. Julie D. Noe, an attorney not associated with Patrick M. Etchebehere's law
16 firm, alleged that she was authorized to appear for Seascape Leasing LLC and had appeared
17 for Seascape Leasing, LLC on June 13, 2018. No notice of association of Ms. Noe had been
18 filed with the court to date, nor had Ms. Noe filed an appearance on behalf of Seascape. Ms.
19 Noe then made an oral motion to allow such association which the court granted. Brandon
20 Boisclair, the annuitant/payee, was also present. The Court, having reviewed all of the written
21 memoranda of points and authorities submitted with W.San, LLC's Petition (motion) and the
22 Opposition and Reply to the Opposition, and having further reviewed all of the written
23 memoranda of points and authorities submitted with Seascape Leasing, LLC's motion and the
24 Opposition thereto, the court having further reviewed all of the exhibits attached to such written
25 memoranda, and having heard the argument of counsel, hereby makes the following.
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FINDINGS OF FACT

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2 1. The matter before the court involves the transfer of structured settlement payment
3 rights pursuant to NRS 42.030.

4 2. Brandon Boisclair (hereinafter "Boisclair") is a payee as defined in NRS 42.030(6)(e).

5 3. Seascope Leasing, LLC (hereinafter "Seascope"), is a transferee as defined in NRS
6 42.030(6)(j).

7 4. Seascope filed its Petition to purchase a portion of Boisclair's structured settlement
8 payment rights on May 24, 2018. The Petition was scheduled to be heard on the Court's
9 chambers calendar on June 25, 2018.

10 5. On May 25, 2018, Patrick M. Etchebehere (hereinafter "Etchebehere"), counsel of
11 record for Seascope, filed an Ex Parte Motion for Order Shortening Time. This ex parte motion
12 contained a Declaration by Etchebehere that, upon information and belief, Boisclair needed an
13 earlier hearing in order to complete a purchase of real estate.
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15 6. Based upon the representations of counsel contained within the Ex Parte Motion for
16 Order Shortening Time and Etchebehere's Declaration, the Court granted an Order Shortening
17 Time and moved the hearing for the petition to its regular calendar on June 13, 2018.
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19 7. On June 13, 2018, Seascope's petition came before the court for hearing. Julie D. Noe
20 (hereinafter "Noe") appeared on behalf of Seascope in the place of Etchebehere. The Court
21 conducted a thorough review of the Petition and questioned Boisclair as the Court was
22 concerned about the amounts being sold and to be received by Boisclair and whether he
23 understood the disparity between those amounts. The Court specifically stated that it wanted to,
24 "... make sure I get all the information..." and that it takes these proceedings very seriously. The
25 Court also wanted to make sure that it did not do something that was not in Boisclair's best
26 interest. The court also reviewed a letter from Ira Frazer, a California lawyer who provided
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1 Boisclair with financial advice. The Court believed, at that time, that Ira Frazer was giving an
2 independent, objective opinion solely for the benefit of Boisclair.

3 8. Based upon all the evidence presented to the Court on June 13, 2018, the Court
4 granted Seascope's Petition and signed in Order granting the Petition, such order having been
5 submitted by Noe.

6 9. However, on June 13, 2018, the Court had no knowledge of two other petitions that
7 had been filed in the District Court involving the transfer of Boisclair's structured settlement
8 payments and which were still pending in two other departments of the District Court on June
9 13, 2018.

10 10. On February 27, 2018, W.San filed a petition to purchase a portion of Boisclair's
11 structured settlement payments. This Petition was assigned to Department 6 of the District
12 Court (Judge Cadish, Case # A-18-770278-P).

13 11. On March 27, 2018, Boisclair told W.San that he did not want to honor his contract
14 with them.

15 12. However, on March 22, 2018, OTTR 18, LLC (hereinafter "OTTR") was incorporated
16 in the State of Wyoming. Boisclair signed a contract with OTTR on March 24, 2018. On March
17 28, 2018, the day after Boisclair told W.San he wanted to cancel, OTTR filed a petition which
18 was assigned to Department 17 of the District Court (Judge Villani, Case # A-18-771917-C).
19 The OTTR petition offered Boisclair \$100,000 more than the W.San petition for the same
20 payments which were being transferred.

21 13. On April 3, 2018, Berman requested that the court continue the hearing on the W.San
22 petition and the court granted a continuance to May 8, 2018.

23 14. On April 17, 2018, counsel for OTTR, Leah Martin (hereinafter "Martin"), filed a Notice
24 to Interested Parties informing them that a hearing on the OTTR petition would take place on
25 May 9, 2018, on Department 17's chambers calendar. Although Martin signed this notice of
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1 hearing, Noe's printed signature block appears above Martin's signature instead of that of "Leah
2 Martin Law."

3 15. On April 24, 2018, W.San filed a Supplement to its petition which increased their offer
4 to Boisclair by \$687,788 from the original offer. This offer exceeded the OTTR offer by
5 \$587,788. In conjunction with the filing of the Supplement, W.San filed an objection in the OTTR
6 case on April 30, 2018.

7 16. On May 7, 2018, W.San received an email from Boisclair which indicated that he still
8 wanted to do a deal with W.San. At the continued hearing before Judge Cadish on May 8, 2018,
9 Counsel Lester A. Berman (hereinafter "Berman") informed the court of the Boisclair email and
10 the OTTR petition and the objection filed by W.San in the OTTR case and requested a further
11 continuance. The court granted this request and continued the hearing to June 12, 2018 but it
12 was later rescheduled to June 26, 2018 due to the fact that Berman was out of town on June 12,
13 2018.
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15 17. After receiving the objection filed by W.San in the OTTR case, Judge Villani, on May
16 9, 2018, removed the OTTR petition from his chambers calendar and reset it for oral argument
17 on June 20, 2018. He further indicated in the minute order that Boisclair must be present at the
18 hearing on June 20, 2018.
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20 18. Also on May 9, 2018, Seascope was incorporated in the State of Nevada and
21 executed a contract with Boisclair to purchase some of his structured settlement payment rights.
22 The aggregate amount of the payments being purchased by Seascope was less than the
23 aggregate amounts in the W.San and OTTR contracts but still encompassed some of the same
24 payments which were the subject of the W.San and OTTR contracts. Seascope then filed its
25 petition which was assigned to this Department.
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27 19. No disclosure was made to the Court in this case of the pending petitions in
28 Departments 6 and 17. Neither Etchebehere, Noe nor Boisclair informed the Court of the other

1 petitions. Both Noe and Boisclair represented to the Court that they knew about the other
2 petitions when they filed the Petition presently before the court.

3 20. Noe was offered the opportunity by the Court to have an evidentiary hearing but Noe
4 declined and indicated that such a hearing would be "futile."

5 21. Noe informed the court that \$100,000 has already been advanced to Boisclair by
6 Seascape.

7 Based upon the above Findings of Fact, the court makes the following,
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9 **CONCLUSIONS OF LAW**

10 1. It is the statutory obligation of the court pursuant to NRS 42.030 to approve the
11 transfer of structured settlement payment rights by making a determination that the transfer of
12 such rights is in the best interests of the payee.

13 2. The failure of Noe, Etchebehere and Boisclair to disclose the existence of pending
14 petitions for transfer of structured settlement payment rights affecting Boisclair's annuity
15 prevented the court from performing, its impartial task of judging cases and, in this case, from
16 determining what was in the best interests of Boisclair pursuant to the above-referenced statute.
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18 3. The non-disclosure of the pending petitions in Departments 6 and 17 of the District
19 Court was an attempt to subvert the integrity of the court itself.

20 4. Furthermore, the court concludes that the Ex Parte Application for Order Shortening
21 Time submitted by Etchebehere, counsel for Seascape, was also an attempt to subvert the
22 integrity of the court by officers of the court and was an attempt to manipulate the court's
23 calendar so as to schedule the hearing in this case prior to the hearing in Department 17's case
24 on June 20, 2018.

25 5. The court concludes that Seascape, Etchebehere and Noe committed a fraud upon the
26 court by clear and convincing evidence pursuant to the holding in *NC-DSH v. Garner*, 125 Nev.
27 647, 218 P.3d 853 (2009).
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1 6. Noe, as counsel for Seascope, waived Seascope's right to an evidentiary hearing.

2 7. The court also concludes that Boisclair knowingly failed to inform the court of the open
3 petitions in Departments 6 and 17.

4 8. Had the court known about the pending petitions in the other departments of the
5 District Court, it would not have granted Seascope's petition and would have continued the
6 hearing on Seascope's petition until the matters in the other departments were resolved.

7 9. On any further consideration of the Seascope petition herein, if the Court believes that
8 approval of the Seascope petition is not in Boisclair's best interest, the Court will not grant such
9 petition.
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11 Based upon all the above Findings of Fact and Conclusions of Law, and good cause
12 appearing therefor,

13 **IT IS HEREBY ORDERED** that due to the fraud perpetrated upon the court, by
14 Seascope, Etchebehere and Noe, W.San's Petition for Relief from Final Order Approving
15 Transfer of Structured Settlement Payment Rights is hereby granted and that the order entered
16 on June 13, 2018 granting the approval of Seascope's Petition for the Approval of Payee, B.B.'s
17 (Boisclair's), Assignment of Certain Future Structured Settlement Payment Rights Due and
18 Owing to Payee Pursuant to NRS 42.030 is vacated.
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20 **IT IS FURTHER ORDERED** that Seascope's Motion to Strike Fugitive Filings is denied.


21 **IT IS FURTHER ORDERED** that the hearing on Seascope's Petition herein is continued
22 to September 26, 2018 at 9 A.M. and that the hearing in Department 17 in Case # A-18-771917-
23 C must be concluded and a disposition made on the OTTR petition prior to there being a
24 disposition on Seascope's Petition herein.
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1 **IT IS FURTHER ORDERED** that if Boisclair has a new petition filed on his behalf by
2 another transferee, he shall inform the court assigned to that matter of what has happened in
3 this case and all pending and prior petitions filed and the related outcome.

4 **IT IS FURTHER ORDERED** that if attorney Etchebehere does not file the appropriate
5 notice that he is withdrawing from any further participation in this matter, he must appear before
6 the court on September 26, 2018 at 9 A.M.

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8 DATED this 19 day of September, 2018.

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11 DISTRICT COURT JUDGE


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CERTIFICATE OF SERVICE

I hereby certify that on or about the date e-filed, I served a copy of the foregoing document: Amended Findings of Fact, Conclusions of Law and Order to:

Julie D. Noe
Law Offices of Julie D. Noe, Ltd.
701 N. Green Valley Pkwy.
Suite 200
Henderson, NV 89074

Lester A. Berman
Lee A. Drizin, Chtd.
c/o: Lester A Berman
2460 Professional Court, Suite 110
Las Vegas, NV 89128


Deborah A. Boyer
Judicial Executive Assistant
Department IV